Message

From: Lannen, Justin [Lannen.Justin@epa.gov]
Sent: 7/25/2019 4:42:47 PM
To: Leathers, James [Leathers.James@epa.gov]
Subject: RE: Re: Eagle US 2 Enforcement history

Thank you!

From: Leathers, James
Sent: Wednesday, July 24, 2019 7:55 PM
To: Lannen, Justin <Lannen.Justin@epa.gov>
Subject: Re: Eagle US 2 Enforcement history

Justin,

To address your questions, Had Eagle inspection report been posted publicly? If so, when?

Regarding the EPA led formal 112(r) administrative action that was settled on 11/3/2015 for a penalty amount of $877,992

I could not find the inspection report. I attached the EPA case report. In the report, the inspection took place on 4/11/13. Below is the case summary.

On November 3, 2015, EPA Region 6 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, settling a CAA Section 112(r) case against Eagle US 2 LLC (Eagle) for violations at its Westlake, Louisiana facility. The CAFO alleges the following violations: (1) failure to adequately follow operating procedures; (2) failure to develop and implement operating procedures which include steps required to correct or avoid deviations; (3) failure to inspect pipe in PHH unit; (4) failure to conduct mechanical integrity inspections of certain pipes; (5) failure to conduct mechanical integrity inspections of pressure vessels; and (6) failure to update process hazard analysis every five years.. The CAFO requires Eagle to pay a $877,992 civil penalty. The CAFO also requires Eagle to implement a hydrogen chloride leak detection and repair SEP for a period of three years (cost $108,000) and to donate emergency equipment to the Moss Bluff Fire Department (cost $11,000).

I attached the two formal administrative actions led by the state that were settled on 6/15/2018 and 12/21/2018. There are similar violations in the 12/21/18 consolidated compliance order and notice of potential penalty. Let me know if you have other questions or need anything additional.

James Leathers
Environmental Engineer
EPA Region 6
Air Toxics Enforcement
Enforcement and Compliance Assurance Division
1201 Elm St., Suite 500, ECDAT
Dallas, TX 75202
(214) 665-6569
leathers.james@epa.gov

Message

From: Lannen, Justin [Lannen.Justin@epa.gov]
Sent: 5/21/2020 8:05:45 AM
To: Leathers, James [Leathers.James@epa.gov]
Subject: Eagle for routing
Attachments: Eagle US 2 CAFO 5.18.20.docx; Eagle US 2 Initial Transmittal Letter 5.18.20.docx

Is there any chance you can get this CAFO and initial transmittal letter routed in the morning?

The only changes I made to the CAFO were for electronic service. The rest is the same as what you reviewed last month.

Thanks

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

October 7, 2020

Maureen Harbourt
Partner
Kean Miller LLP
400 Convention Street, Suite 700
Post Office Box 3513 (70821-3513)
Baton Rouge, Louisiana 70802

Sent via email: maureen.harbourt@keanmiller.com

RE: In the Matter of Eagle US 2 LLC, Lake Charles Complex, Westlake, Louisiana
CAA-06-2020-3369

Dear Ms. Harbourt,

Please find enclosed a copy of the fully executed Consent Agreement and Final Order ("CAFO") that was filed with the Regional Hearing Clerk in EPA, Region 6. Eagle US 2 LLC will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of thirteen thousand one hundred fifty dollars ($13,150). Please note the timeframes listed in the CAFO for compliance with the conditions of settlement.

If you have any questions, please contact Justin Lannen, Assistant Regional Counsel, by phone at 214-665-8130 or by email at lannen.justin@epa.gov. Thank you for your assistance with this matter.

The EPA acknowledges that the COVID-19 pandemic may impact your business. If that is the case, please contact us regarding any specific issues you need to discuss.

Sincerely,

Cheryl T. Seager

Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental Protection Agency, cn=CHERYL SEAGER, 0.9.2342.19200300.100.1.1=68001003651793
Date: 2020.10.07 14:53:50 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure (1)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	(	
	(	
Eagle US 2 LLC	(	DOCKET NO. CAA 06-2020-3369
	(	
	(	
	(	
RESPONDENT	(	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act, (the "CAA" or "Act"), 42 U.S.C. § 7413(d), and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 (the "EPA"). On the EPA's behalf, the Director of the Compliance Assurance and Enforcement Division has been delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is a limited liability company doing business in the State of Louisiana. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding

Final Order hereinafter known together as "CAFO" without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. JURISDICTION

5. This CAFO is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B).

6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than a year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. In satisfaction of the notice requirements of Section 113(a)(1), on October 15, 2019, the EPA issued to Respondent a notice of violation ("NOV") and provided a copy of the NOV to the State of Louisiana, providing notice to both that the EPA found that Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On October 31, 2019, representatives of Respondent and the EPA discussed the October 15, 2019, NOV.

8. The Regional Judicial Officer is authorized to ratify this CAFO, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

9. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. The Act is designed to protect and enhance the quality of the nation's air so as to promote public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).

11. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards ("NAAQS") for certain pollutants ("criteria pollutants"). The NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare.

12. The Administrator has promulgated a NAAQS for ozone, a criteria pollutant. *See* 40 C.F.R. § 50.19.

13. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state adopt and submit a plan to the Administrator that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region. This plan is known as an applicable implementation plan or state implementation plan ("SIP").

Louisiana State Implementation Plan

14. The State of Louisiana has adopted a SIP that has been approved by EPA. *See* 40 C.F.R., Part 52, Subpart T.

15. Under the Louisiana SIP, a "major source" is any stationary source that directly emits or has the potential to emit 100 tons per year ("tpy") or more of any regulated air pollutant. LAC 33:III.502.

16. The Louisiana SIP defines "regulated air pollutant" to include volatile organic compounds (VOC). LAC 33:III.502; *see also* LAC 33.III.504.K and 509.B (stating that VOC are precursors to ozone, a criteria pollutant).

17. The Louisiana SIP provides that the owner or operator of any source in Louisiana has a general duty to operate under a permit and that the source shall be operated in accordance with all terms and conditions of the permit. *See* LAC 33:III.501.C.4.

Title V Operating Permit Program

18. Title V of the Act, 42 U.S.C. §§ 7661–7661f ("Title V"), establishes a permit program for certain stationary sources of air pollution. *See* 42 U.S.C. § 7661a(a).

19. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V. On October 12, 1995, EPA granted full approval to the Louisiana Title V operating permits program ("Louisiana Title V Operating Permits Program" or "Louisiana Part 70 Operating Permits Program"). 40 C.F.R. Part 70, Appendix A; *see* 60 Fed. Reg. 47,296 (Sept. 12, 1995). Louisiana's Title V operating permits program is located in LAC 33:III.Ch.5.

20. Any major source as defined in LAC 33:III.502, *see supra*, must obtain a Title V operating permit that ensures compliance with all federally applicable requirements for each emissions unit at the source. *See* LAC 33:III.507.A.1. and 3.

21. "Federally applicable requirements" include any standard or other requirement provided for in the Louisiana SIP approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 C.F.R. Part 52, Subpart T. LAC 33:III.502.

22. Louisiana Title V operating permits incorporate requirements that implement the Louisiana SIP's objective in maintaining the NAAQS. These requirements include specific limitations on a source's emissions of criteria pollutants. *See* LAC 33:III.537.A., Table 1 (stating the Emission Rates for Criteria Pollutants section of a permit establishes emission limitations and is a part of the permit).

23. Louisiana's Title V program provides that major sources shall be operated in compliance with all terms and conditions of their permits. *See* LAC 33:III.507.B.2. Noncompliance with any federally applicable term or condition of the permit constitutes a violation of the Clean Air Act and is grounds for enforcement action. *Id.*

24. Any term or condition of a permit issued pursuant to LAC 33.III.507 is enforceable by EPA, unless specifically designated in the permit as not being federally enforceable. LAC 33:III.C.7.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

25. Eagle US 2 LLC ("Eagle") owns and/or operates the Lake Charles Complex located at 1300 PPG Dr, Westlake, Louisiana 70669 (the "Facility").

26. At all times relevant to this proceeding, Respondent has owned and/or operated the Facility.

27. Respondent is the operator of the Facility within the meaning of LAC 33:III.111.

28. At all times relevant to this proceeding, Respondent owned and/or operated units that emit VOC at the Facility.

29. The Facility is a chemical manufacturing facility that produces chlorine, caustic, and hydrogen in the Chlor/Alkali process area and chlorinated hydrocarbons and muriatic acid in the Derivatives process area.

30. The Facility is a "stationary source" as that term is defined in LAC 33:III.502 of the LAC 33:III.502 of the Louisiana SIP, 81 Fed. Reg. 51,341 (Aug. 4, 2016).

31. At all times relevant to this proceeding, the Facility was a "major source" within the meaning of the LAC 33:III.502 of the Louisiana SIP, 81 Fed. Reg. 51,341 (Aug. 4, 2016).

32. The Facility is subject to the Louisiana Title V Operating Permits Program.

33. On or about May 19, 2014, Respondent was issued Permit No. 2270-V5, an air permit issued under the Louisiana Title V Operating Permits Program. Permit No. 2270-V5 covered the Per/Tri Unit at the Facility until it was modified through issuance of Permit No. 2270-V6 on October 16, 2018. The Per/Tri Unit consists of numerous emission points, including the Per/Tri Unit Cooling Tower (EQT 0279).

34. On or about July 21, 2017, Respondent was issued Permit No. 2695-V9, an air permit issued under the Louisiana Title V Operating Permits Program. Permit No. 2695-V9 covered the TE 2 Unit at the Facility until it was modified through issuance of Permit No. 2695-V10 on May 16, 2018. The TE 2 Unit consists of numerous emission points, including the MC/DCE Scrubber (EQT 0434).

35. The Facility's Title V Permits Nos. 2270-V5 and 2695-V9 required that Respondent comply with emission rate limits for criteria pollutants set forth in those permits, including limits on total VOC emissions.

36. On October 4, 2018, EPA sent Respondent a letter regarding the agency's Emission Inventory Permit Consistency Review, in which EPA reviewed the Facility's emission inventory for criteria pollutant and hazardous air pollutant (HAP) emission totals for calendar years 2016 and 2017, as reported to the Louisiana Department of Environmental Quality ("LDEQ"). As noted in EPA's October 4, 2018, letter, the Facility's reported annual

emission totals exceeded its permitted limits in existence at the time of the emissions in 2016 and 2017. Respondent's written response dated November 7, 2018, provided further information regarding the Facility's annual emissions.

E. ALLEGED VIOLATIONS

Claim 1: Failure to Comply with Permitted Emission Rate Limit for Total VOC at the Per/Tri Unit Cooling Tower

37. Title V Operating Permit No. 2270-V5 required that Respondent limit its emissions of total VOC to 0.92 tons per year (tpy) at the Facility's Per/Tri Cooling Tower (EQT 0279) during calendar year 2016.

38. On information and belief, Respondent exceeded this permit limit for 2016. Specifically, Respondent reported 1.126 tons of total VOC emissions from the Per/Tri Cooling Tower, which exceeded the permitted limit of 0.92 tons.

39. By exceeding Respondent's permitted total VOC limit, Respondent violated Title V Operating Permit No. 2270-V5 and LAC 33:III.501.C.4. of the Louisiana SIP.

Claim 2: Failure to Comply with Permitted Emission Rate Limit for Total VOC at the TE 2 MC/DCE Scrubber

40. Title V Operating Permit No. 2695-V9 required that Respondent limit its emissions of total VOC to 0.14 tpy at the TE 2 Unit MC/DCE Scrubber (EQT 0434) during calendar year 2017.

41. On information and belief, Respondent exceeded this permit limit for 2017. Specifically, Respondent reported 0.22 tons of total VOC emissions from the TE 2 Unit MC/DCE Scrubber, which exceeded the permitted limit of 0.14 tons.

42. By exceeding Respondent's permitted total VOC limit, Respondent violated Title V Operating Permit No. 2695-V9 and LAC 33:III.501.C.4. of the Louisiana SIP.

F. CIVIL PENALTY AND CONDITIONS OF SETTLEMENT

General

43. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;

b. neither admits nor denies the specific factual allegations contained in the CAFO;

c. consents to the assessment of a civil penalty as stated below;

d. consents to the issuance of any specified compliance or corrective action order;[1]

e. consents to the conditions specified in this CAFO;

f. consents to any stated Permit Action;[2]

g. waives any right to contest the alleged violations set forth in Section E of this CAFO; and

h. waives its rights to appeal the Final Order included in this CAFO.

44. For the purpose of this proceeding, Respondent:

a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

1 Although 40 C.F.R. § 22.18(b)(2) requires each subbullet, d. and f. are not applicable to the particular case.
2 *See id.*

b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);

d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the Western District of Louisiana;

e. waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and

f. agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to this Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States

were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

Penalty Assessment and Collection

45. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, EPA has assessed a civil penalty in the amount of Thirteen Thousand One Hundred and Fifty Dollars ($13,150) ("EPA Penalty"). The EPA Penalty has been determined in accordance with Section 113 of the Act, 42, U.S.C. § 7413 and at no time exceeded EPA's statutory authority.

46. Respondent agrees to:

a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO, and

b. pay the EPA Penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving US currency; or (5) Online Payment.

For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, payment should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. FedEx), payment should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
(314) 418-4087

For wire transfer, payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White
(301) 887-6548

For Online Payment:

https://www.pay.gov/paygov/
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: The docket number CAA 06-2020-3369 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference Respondent's name and address, the case name, and docket number CAA 06-2020-3369. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Chief
Air Toxics Enforcement Section (ECD-AT)
Enforcement and Compliance Assurance Division
U.S. EPA Region 6
1201 Elm St, Suite 500
Dallas, TX 75270
Email: Stucky.Marie@epa.gov

And

Region 6 Hearing Clerk
Office of Regional Counsel (ORC)
U.S. EPA Region 6
1201 Elm St, Suite 500
Dallas, TX 75270

47. Respondent agrees to pay the following on any overdue EPA Penalty:

    a. Interest. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any unpaid portion of a civil penalty must bear interest at the rates established pursuant to 26 U.S.C. § 6621(a)(2).

    b. Nonpayment Penalty. On any portion of a civil penalty more than 90 calendar days delinquent, Respondent must pay a nonpayment penalty, pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), which shall accrue from the date the penalty payment became delinquent, and

which shall be in addition to the interest which accrues under subparagraph a. of this paragraph.

48. Respondent shall pay a charge to cover the cost of processing and handling any delinquent penalty claim, pursuant to 42 U.S.C. § 7413(d)(5), including but not limited to attorneys' fees incurred by the United States for collection proceedings.

49. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

a. refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33;

b. collect the above-referenced debt by administrative offset (i.e. the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

Condition of Settlement

50. As a Condition of Settlement, Respondent agrees to the following: Within ninety (90) days of the Effective Date of this CAFO, Respondent shall evaluate measures to prevent excess emissions of total VOC from the Per/Tri Unit Cooling Tower (EQT 0279) and the TE 2 Unit MC/DCE Scrubber (EQT 0434).

51. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, Respondent agrees to certify to EPA completion of the Condition of Settlement in Paragraph 50 above and provide any necessary documentation. Respondent represents that the signing representative will be fully authorized by Respondent to certify that the terms and conditions of this CAFO have been met. The certification should include the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment.

The certification required above shall be sent to:

James Leathers, Enforcement Officer (6ECD-AT)
Air Toxics Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6

1201 Elm St, Suite 500
Dallas, Texas 75270
Email: Leathers.James@epa.gov]

EPA has 90 days to respond with questions or disagreement that the conditions of the CAFO have been satisfied.

52. Respondent agrees that the time period from the Effective Date of this CAFO until all the conditions specified in Paragraph 50 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims set forth in Section E of this CAFO (the "Tolled Claims"). Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

53. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 52, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment or delegation, Respondent shall continue to be bound by the obligations or liabilities of this CAFO until the EPA has provided written approval.

54. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information.

55. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has legal capacity to bind the party he or she represents to this CAFO.

56. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

57. Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17. Except as qualified by Paragraph 48, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

58. Complainant and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

lannen.justin@epa.gov

To Respondent:

maureen.harbourt@keanmiller.com

G. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

59. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

60. If Respondent fails to timely and satisfactorily complete every condition stated in Paragraph 50 (including payment of any stipulated penalties owed), then Complainant may compel Respondent to perform the condition(s) in Paragraph 50, seek civil penalties that accrue from the Effective Date of this CAFO until compliance is achieved, and seek other relief in a civil judicial action pursuant to the Clean Air Act, pursuant to contract law, or both.

61. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

62. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

63. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

64. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to $101,439 per day of violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

65. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

66. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

H. EFFECTIVE DATE

67. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

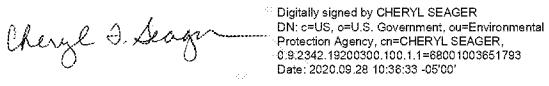
The foregoing Consent Agreement In the Matter of Eagle US 2 LLC, Docket No. CAA 06-2020-3369, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Date: _09/11/2020_____

_____
Curtis Brescher
Plant Manager
Lake Charles Complex
Eagle US 2 LLC

FOR COMPLAINANT:



Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	(	
	(	
Eagle US 2 LLC	(	DOCKET NO. CAA 06-2020-3369
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	(	
RESPONDENT	(	

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Eagle US 2 LLC is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. §22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Rucki, Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas, email=Rucki.Thomas@epa.gov
Date: 2020.10.01 14:37:12 -05'00'

Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the address:

Copy via Email to Counsel for Respondent:

maureen.harbourt@keanmiller.com

RICHARD LANNEN

Digitally signed by RICHARD LANNEN
DN: c=US, o=U.S. Government, ou=Environmental Protection Agency, cn=RICHARD LANNEN, 0.9.2342.19200300.100.1.1=68001003655726
Date: 2020.10.08 15:43:41 -05'00'

Signed

KEAN | MILLER LLP
ATTORNEYS AT LAW

MAUREEN N. HARBOURT, PARTNER
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maureen.harbourt@keanmiller.com

January 24, 2020

Confidential for the Purpose of Settlement

Justin Lannen
Assistant Regional Counsel
Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270
Lannen.Justin@epa.gov

RE: Eagle US 2 LLC – Lake Charles Complex
Clean Air Act Notice of Violation
File No. 9142.100

Dear Mr. Lannen:

Eagle US 2 LLC ("Eagle") received a Notice of Violation ("NOV") on October 21, 2019, issued by the Environmental Protection Agency ("EPA") which alleged four violations of the Clean Air Act involving Eagle's Lake Charles Complex located at 1300 PPG Drive, Westlake LA 70669 ("the Facility"). Eagle US 2 LLC is a wholly owned subsidiary of Axiall Corporation, a Westlake Chemical company. The purpose of this letter is to propose a settlement offer to EPA to resolve any claims for a civil penalty concerning the allegations in the NOV.

The NOV arose from EPA's Emission Inventory Permit Consistency Review, in which EPA compared emissions reported in its annual emission inventory reports to EPA and the Louisiana Department of Environmental Quality to emission limit deviations reported in Title V permit deviation report. In October 2018 EPA sent a letter to Eagle requesting information concerning potential discrepancies between the emissions inventory reports and permit deviation reports for calendar years 2016 and 2017. Eagle comprehensively responded to EPA in a letter dated November 7, 2018. That response indicated that there were two (2) instances in which small exceedances from the ton per year permit limits were reported in the inventory but had not been included in the Title V deviation reports. One of those incidents was in 2016 and involved an exceedance of the VOC ton per year permit limit for the Per/Tri Cooling Tower by 0.206 tpy (412 pounds). The other occurred in 2017 and involved an exceedance of the VOC tpy limit for the MC/DCE Scrubber by 0.08 tpy (160 pounds). Subsequent to responding to EPA, Eagle then included these two deviations in their next due Title V deviation report.

The NOV issued by EPA alleges the following four violations:

Count 1: an exceedance of the Facility's Per/Tri Cooling Tower (EQT 0279) 0.92 tons per year ("tpy") permit limit for VOC by 0.206 tpy in 2016;

Count 2: failure to timely report the VOC permit exceedance for the Per/Tri Cooling Tower (EQT 0279) alleged in Count 1 in the Title V semiannual deviation report as required by Specific Requirement 93 of the applicable permit;

Count 3: an exceedance of the Facility's MC/DCE Scrubber (EQT 0434) 0.14 tpy permit limit for VOC by 0.08 tpy in 2017; and

Count 4: failure to timely report the VOC permit exceedance related to Count 3 in the Title V semiannual deviation report as required by Specific Requirement 107 of the applicable permit.

Eagle proposes to resolve any claim for civil penalties by EPA for these four counts by entering into a Consent Agreement and Final Order requiring payment of **Thirteen Thousand One Hundred Fifty Dollars ($13,150.00).** The following discussion provides the rationale to support this settlement offer, based on EPA's Clean Air Act Civil Penalty Policy (the "Policy") and equitable factors.

At the outset, it should be noted that none of these alleged violations involved any economic benefit. In both Counts 1 and 3, Eagle was in compliance with the underlying regulatory standards regarding work practices even though it slightly exceeded its VOC permit limits. Thus, there was no failure to implement control requirements or any other failure that resulted in economic benefit. Counts 2 and 4 involve incomplete reports, not failure to report. Further, the facility did report these emissions timely on emissions inventory reports and did correct the Title V semiannual deviation report by including them on the next due report per Louisiana policy once the inadvertent error was realized. There was no economic benefit associated with these reporting errors.

I. Title V Permit 2270-V5 – Per/Tri Cooling Tower (EQT 0279)

A. Count 1 - Permit Emissions Deviation

1. Preliminary Deterrence Component

In determining a penalty amount or a settlement amount, the Agency looks to the factors enumerated in Clean Air Act § 113(e), the facility's compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, the size of the business, and such

other factors as justice may require. EPA's Civil Penalty Policy[1] (the "Policy") provides some guidance on application of these factors. Under the Policy, EPA is to first determine a preliminary deterrence amount based on actual/possible harm, importance to the regulatory scheme, the size of the violator, and recovering any economic benefit of noncompliance. The Policy allows EPA to adjust the preliminary deterrence amount through use of specified adjustment factors.

There was no actual harm associated with the minor VOC permit limit exceedance in 2016 at the Per-Tri Cooling Tower (EQT 0279). The Per-Tri Unit Cooling Tower at all times during 2016 was in compliance with the underlying Maximum Achievable Control Technology standards for heat exchange systems/cooling towers under 40 C.F.R. § 63.104. Many states do not impose ton per year emission limitations on cooling towers, but rather require compliance only with the underlying regulation. Louisiana chooses to do both in its Title V permits. However, although the annual VOC tpy permit emissions limit was exceeded, the Per-Tri Unit Cooling Tower was in compliance with 40 C.F.R § 63.104 requirements for heat exchanger systems/cooling towers.

The 2016 VOC annual emissions deviation for the Per/Tri Cooling Tower was very small at only 0.206 tons (412 pounds) over the permit limit.. There have been no VOC permit limit exceedances since 2016 for the Per/Tri Cooling Tower. The total VOC actual emissions from sources subject to permit 2270-V6 in 2016 was only 2.49 tpy, which is less than half of the total authorized VOC emissions from all such sources under the permit- 6.62 tpy. Moreover, the facility is located within Calcasieu Parish, which is an ozone attainment area. Thus, there was no actual harm, and little potential for harm.

The Policy indicates that where an exceedance is 1-30% above **a regulatory standard,** the starting point for the gravity-based component is $5,000. **However, the Policy cautions that such is not applicable where there is not a regulatory standard.** Here, the emissions were in compliance because Eagle was in compliance with the work practice standard for heat exchange systems required by 40 C.F.R. § 63.104. The only deficiency was in the state ton per year limit, and then by only a small amount. Eagle suggests that a more appropriate gravity based penalty component would be $2,000.00, based on analogy to the EPA's Vinyl Chloride Civil Penalty Policy ("VC Policy").[2] The VC Policy indicates that a release of vinyl chloride < 100 pounds should be assigned an initial gravity based component of $1,000 whereas a release in the amount of 100 to 2000 pounds should be assigned a gravity based component of $2,000.00.

The Policy indicates that for SIP and NSPS cases only, a factor should be added to the gravity based penalty calculation for "sensitivity of the environment." The deviation at issue was not a

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[1] The EPA Clean Air Act Stationary Source Civil Penalty Policy, 1991, is available at: https://www.epa.gov/sites/production/files/documents/penpol.pdf.

[2] The Vinyl Chloride Policy is Appendix II to the Clean Air Act Civil Penalty Policy.

deviation from a SIP requirement (no deviation from any of the VOC control rules under LAC 33:III.Ch. 21) or from an NSPS requirement. Further, as noted, the total amount of VOC actually emitted from the Per/Tri Unit in 2016 (2.49tpy) was less than the total amount of VOC authorized for all point sources under the Per/Tri permit (6.62 tpy); thus indicating that there was no harm to the environment. Thus, no factor for sensitivity to the environment should be included.

Because this was a one-time, isolated deviation, no increase should be added for a "duration" factor. The Per/Tri Cooling Tower has been in compliance with the VOC tpy limit for calendar years 2017-2019. The Policy indicates that the duration factor is included because "generally, the longer a violation continues uncorrected, the greater the risk of harm." Policy at p. 10. However, as noted above, the total VOC emitted by the Per/Tri unit as a whole in 2016 was less than the total VOC permitted. Where there was compliance with the underlying regulatory standard and no excess VOC emissions from the unit as a whole, there is no basis to include a duration factor in this particular instance.

The Policy indicates that the preliminary deterrence amount should consider the size of the violator. Under the policy the size of the violator factor ranges from $2,000.00 to over $70,000.00. However, the Policy indicates that EPA has discretion to reduce the size of violator factor to no more than 50% of the gravity based penalty (after duration, but before adjustments) where the size of violator component is greater than 50% of the gravity based penalty. While we have not determined what the size of the violator factor is in this case, Eagle believes that equity requires EPA to use a size of violator factor no greater than 50% of the otherwise calculated gravity based component in this case. Eagle does not need a large penalty as a deterrent. Eagle has already demonstrated compliance with the VOC limit for the cooling tower for 2017-2019. In this case, the size of violator factor should be no more than $1,000.00 (50% of the gravity based component as determined above), for a total of $3,000.00 for the preliminary deterrence amount.

2. Adjustment of the Preliminary Deterrence Amount

Under the Policy, the gravity based component may be adjusted to promote equitable treatment of the regulated community. *See* Policy at p. 8. And the Policy specifically authorizes adjusting the penalty based on the degree of cooperation of the facility in remedying the violation and for litigation risk (including "other factors as justice may require"). Eagle requests that the preliminary deterrence amount of $3,000 be adjusted downward by 30% to $2,100 due to Eagle's degree of cooperation and in order to reflect equitable treatment within the regulated community.

The degree of cooperation of the facility in remedying the violation is an appropriate factor to consider in adjusting the penalty. *See* Policy at p. 16. The Policy indicates that the Preliminary Deterrence amount may be reduced by up to 30% where there has been prompt correction of environmental problems and where the facility cooperated with EPA in the investigation and correction of the problem at issue. Eagle has not exceeded its VOC tpy limit for the Cooling Tower since 2016; thus, the issue was promptly corrected and Eagle has maintained compliance for over three years, without the necessity of EPA taking enforcement action.

Further, Eagle was fully cooperative during the Agency's Emission Inventory Permit Consistency Review. Eagle provided the Agency with a comprehensive response to each of the Agency's citations within a month of receipt of the Agency's October 2018 letter. Eagle has sought to be forthright in its communications with the Agency and believes that the Agency has received all of the information requested.

3. Settlement Proposal

For the reasons stated above, Eagle offers to resolve Count 1 for the sum of **$2,100.00.**

B. Count 2 – Incomplete Deviation Reporting

1. Preliminary Deterrence Amount

Eagle's internal emissions tracking system appropriately included the total amount from the Per Tri Unit Cooling Tower in its annual Emissions Inventory report that was timely submitted to LDEQ and EPA. However, the exceedance of the tpy permit limit was inadvertently missed by the Facility's internal "reasonable inquiry" permit deviation tracking system and was inadvertently omitted from the 2nd Half 2016 Semiannual Deviation report. Eagle has since modified that reasonable inquiry tracking system to ensure that similar events will be timely included in Title V deviation reports.

Eagle's internal system for identifying potential exceedances failed to flag the VOC annual emissions exceedance cited. This mechanism would provide the reasonable inquiry process for the responsible official certifying the deviation reporting under 40 C.F.R. 70.5(d) and LAC 33:III.535(R)(4). The Agency has explained that such a certification does not need to be based on absolute knowledge, but rather a reasonable inquiry.[3] That is, if it was reasonable to expect the responsible official to know a deviation was happening, by way of some reporting mechanism or data, then the deviation should have been reported. On the other hand, if it was not reasonable to expect the responsible official to know a deviation had happened by way of the reporting mechanism or data, such is a mitigating factor in the failure to timely report.

Eagle's reasonable inquiry process focuses on regulatory violations. As noted above, there was no violation of the underlying regulation in 40 C.F.R. 63.104. Eagle submitted timely semiannual HON reports confirming that there was no deviation from these requirements. Those reports were reviewed as part of the reasonable inquiry process and because there was compliance with the rule, the slight

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[3] *See* Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs, 79 FR 43661-01 (citing "White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program," Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, to Air Division Directors, March 5, 1996, page 33).

exceedance of the VOC permit limit was not immediately recognized. As noted, Eagle has revised its reasonable inquiry tracking system to ensure that such situations will be timely recognized in the future.

Although Eagle did not report the VOC tons per year deviation for the Per/Tri Cooling Tower in the 2016 2nd Half Semiannual Deviation Report to the LDEQ, once discovered through the process of responding to EPA's information requests, Eagle reported to the La. Dept. of Environmental Quality ("LDEQ") in its 2018 2nd Half Semiannual Deviation Report. Specifically, Eagle reported both the VOC tons per year deviation and the failure to report the tons per year deviation in the 2nd Half 2018 report. Thus, the disclosure of the deviation was submitted late, but was reported.

Under the Policy, the penalty range for an incomplete report is $5,000.00 to $15,000.00, whereas the penalty for a late report is $5,000.00. Regardless, Eagle believes that the preliminary deterrence amount for this count should be no more than $5,000.00 given that the emissions were included on the 2016 annual Emissions Inventory Report that was timely submitted and on timely Semiannual HON reports that confirmed no deviation from the HON requirements for the heat exchanger/cooling tower system. Further, this was a minor omission from an otherwise complete semiannual deviation report. Eagle has fourteen Title V permits, each with multiple specific requirements and emission limits, resulting in thousands of requirements that must be reviewed for the semiannual deviation reports. This was the only omission from an otherwise complete Title V 2nd Half 2016 Semiannual Deviation Report.

With regard to the Duration factor, it again should be emphasized that this factor is included because it is presumed that the longer a violation exists, the greater the harm. However, where other reports provide much of the same information, any harm is diminished. For this reason, Eagle believes that the Duration factor used for the Preliminary Deterrence amount should be no more than $5,000, bringing the total preliminary deterrence amount before consideration of the size of violator factor to $10,000. Again, the Policy indicates that where the Size of Violator factor is greater than 50% of the preliminary deterrence amount, it may be reduced to 50% of the preliminary deterrence amount, or in this case $5,000. Thus, the preliminary deterrence amount is $15,000.00 after application of the Size of Violator factor.

2. Adjustment Factors

a. Degree of Cooperation

Eagle requests that the preliminary deterrence amount of $15,000.00 be adjusted downward by 30% to $10,500.00 due to Eagle's degree of cooperation. The degree of cooperation of the facility in remedying the violation is an appropriate factor to consider in adjusting the penalty. *See* Policy at p. 16. The Policy indicates that the preliminary deterrence amount may be reduced by up to 30% where there has been prompt correction of environmental problems and where the facility cooperated with EPA in the investigation and correction of the problem at issue.

Eagle was fully cooperative during EPA's Emission Inventory Permit Consistency Review. Eagle provided EPA with a comprehensive response to the agency's October 2018 letter within a month of receipt. Eagle's review to preparing the November 2018 response to EPA revealed that EPA was correct in its assertion that the Per/Tri cooling tower exceeded VOC tpy emissions limit for 2016. Thus, without waiting for future action by EPA, Eagle included in its next due Title V Semi-Annual Deviation report, the 2nd Half 2018 report submitted on March 26, 2019, the information concerning both the excess emissions from the Per/Tri Cooling Tower and the failure to include those on the 2nd Half 2016 Semi-Annual Deviation report. LDEQ guidance to the regulated community has consistently been that this is the appropriate way to correct prior reporting errors – that is, to include them on the next due semiannual report rather than amending prior filed reports.

Eagle has sought to be forthright in its communications with the Agency and believes that the Agency has received all of the information requested. Eagle is willing to resolve this matter without the necessity of litigation if the parties can agree upon a fair and equitable settlement. For this reason, Eagle requests that EPA reduce the preliminary deterrence amount by 30% to $10,500.00.

b. Other Factors as Justice May Require

Eagle requests that EPA further reduce the preliminary deterrence amount to no more than $5,000.00 for this count. The Policy indicates that one of its goals is the fair and equitable treatment of the regulated community. However, the calculations under the Policy yield penalties for incomplete deviation reports that are grossly excessive when compared to LDEQ's penalty rules and actual penalty assessments and when considering the actual circumstances of this matter. The LDEQ has primacy in enforcing Title V permits within Louisiana. LDEQ has adopted Expedited Penalty Rules to encourage prompt resolution of environmental deviations. The LDEQ penalty rule creates an expedited penalty for untimely submission of a required Title V Semiannual Deviation report in the amount of $500.00. *See* LAC 33:I.807 (Air Violations). While EPA may take enforcement in the stead of LDEQ, equity and fairness counsel that EPA should treat facilities similarly to LDEQ when enforcing LDEQ issued Title V permits. EPA should not deviate substantially from LDEQ in penalties for the same offense; otherwise, there is not equitable treatment of the regulated community. The following represent recent examples of LDEQ assessment of Expedited Penalties in similar circumstances:

- Delfin LNG, AE-XP-19-00137 imposed $1500 for 3 counts: Late 1st half 2017 semi-annual Title V deviation report; late 2nd half 2017 semi-annual deviation report; late 2017 Title V annual compliance certification. *See* LDEQ EDMS 11630125.

- Magnolia LNG, AE-XE-19-00170 imposed $1000 for 2 counts: late 1st half 2016 semi-annual Title V deviation report and late 2nd half 2016 semi-annual Title V deviation report. *See* LDEQ EDMS 11662958.

- YCI Methanol One, LLC, AE-XP-19-00296 imposed $500 for late filing of the 1st Half 2017 semi-annual Title V deviation report. *See* LDEQ EDMS 11706034.

- Grey Rock, AE-XP-18-00306 imposed $2000 4 counts: failure to submit the 2016 annual compliance certification; late submittal of 1st and 2nd half 2017 Title V deviation reports; and late submission of 2016 annual emissions inventory report. *See* LDEQ EDMS 11716661.

- Texas Midstream Products, AE-EX-14-01210 imposed $2000 for 4 counts: late 2014 annual compliance certification, late submittal of both 1st and 2nd half 2013 semi-annual deviation reports; and late 2013 annual emissions inventory report. *See* LDEQ EDMS 11765086.

Additional examples can be provided.

LDEQ has discretion concerning use of the Expedited Penalty rules and sometimes chooses not to use such rules in resolving violations. That said, LDEQ's imposition of penalties under final Penalty Assessments result in penalties for similar (albeit more serious) reporting deficiencies that are only a fraction of what EPA's Penalty Policy would yield, without adjustment for "other factors as justice may require." For example in the matter of PSI Midstream Partners, LDEQ issued Penalty Assessment AE-P-14-00517 for $2555.72 for 4 counts: 1) failure to certify 2010 1st Half Semiannual Deviation report; 2) failure to submit 2012 2nd Half Semiannual Deviation Report; 3) late submittal of 2012 1st Half Semi-Annual Deviation report; and 4) failure to submit 2012 Annual Compliance Certification. LDEQ had previously issued a Compliance Order and the company submitted the missing reports in April 2014. See LDEQ EDMS No. 9692486.

The Policy states that EPA may consider "such other factors as justice may require" when making a penalty determination. Policy at p. 2. Eagle believes that EPA may adjust the preliminary deterrence amount bases on such equitable factors. While Eagle recognizes that EPA is not bound by LDEQ rules or practices, we believe these are relevant factors to consider. Eagle requests that EPA adjust the total penalty for this count to no more than $5,000, which is 10 times greater than LDEQ's expedited penalty and more than double the amount that LDEQ has imposed under similar circumstances where it has chosen not to use the Expedited Penalty rule.

3. Settlement Offer

For the reasons stated above, Eagle offers to resolve Count 2 for the sum of **$5,000.**

II. Title V Permit - MC/DCE Scrubber

A. Count 3 – Permit Emissions Deviation

1. **Preliminary Deterrence Amount**

Count 3 involved an exceedance of the Facility's MC/DCE Scrubber (EQT 0434) permit limit for VOC by 0.08 tpy (160 lbs.) in 2017. This deviation for the MC/DCE scrubber resulted from multiple startup events and two turnarounds and unexpected shutdowns during the 2017 operating year. The Scrubber complied at all times with the underlying applicable regulations. As set forth in Table 2 of the Title V permit, this source is not subject to the SIP VOC control rule because it has less than 100 pounds of VOC emissions in a 24 hour period. See LAC 33:III.2115.K. The scrubber is not used to control any Group 1 HON regulated process vents and is only used in accordance with the facility's HON SSM plan for control of emissions during SSM activities and for minor HON Group 2 or maintenance emissions. At all times, the scrubber complied with the unit's SSM plan. Thus, there was compliance with all underlying applicable rules.

As noted, the exceedance was relatively small: only 0.08 tons, or 160 lbs., during 2017. Eagle's internal system for identifying potential exceedances failed to flag the exceedance. The total emissions were included in the 2017 annual emissions inventory report.

The permit in effect for 2017 annual emissions was TE-2 Unit permit 2695-V9, issued July 21, 2017. The permit was modified on May 16, 2018 and on August 6, 2018; however neither of these modifications involved the MC/DCE Scrubber. On September 4, 2018, Eagle submitted an application for a minor modification to permit no. 2695-V11 to address clearing of process equipment to the MC/DCE Scrubber during maintenance outages. Specifically, Eagle requested the addition of General Condition XVII authorization to cover clearing activities to the MC/DCE scrubber. The request increased the GC XVII limits by an additional 0.05 ton per year VOCs. *See* LDEQ EDMS 11292947. The permit authorizing this increase was issued on October 1, 2018. *See* LDEQ EDMS 11328683. Certain errors in that permit were corrected through issuance of an additional modification on October 17, 2018. *See* LDEQ EDMS No. 11359849. These maintenance clearing activities are the types of activities that would have occurred during the 2017 start up and turnaround events that may have contributed to the VOC exceedance at the scrubber. Accordingly, the permit modification now authorizes these types of emissions from the scrubber and constituted corrective action for this matter. Emissions from the scrubber were in compliance with all permit limitations in 2018 and 2019.

The total VOC actual emissions from sources subject to permit 2695-V9 in 2017 was only 3.17 tpy, which is less than 25% of the total authorized VOC emissions from all such sources under the permit- 18.16 tpy. Moreover, the facility is located within Calcasieu Parish, which is an ozone attainment area. Thus, there was no actual harm, and little potential for harm.

The Policy indicates that where an exceedance is 1-30% above **a regulatory standard,** the starting point for the gravity-based component is $5,000. **However, the Policy cautions that such is not applicable where there is not a regulatory standard.** Here, the emissions were in compliance

because Eagle was in compliance with the underlying requirements for the scrubber set forth in Specific Requirements 21-24 of the Title V permit 2695-V9. The only deficiency was exceeding the state ton per year VOC limit, and then by only a small amount. Eagle suggests that a more appropriate gravity based penalty component would be $1,000.00, based on analogy to the EPA's Vinyl Chloride Civil Penalty Policy ("VC Policy").[4] The VC Policy indicates that a release of vinyl chloride < 100 pounds should be assigned an initial gravity based component of $1,000 of 100 to 2000 pounds should be assigned a gravity based component of $2,000. While the amount of VOC over the limit was 160 pounds, the seriousness of a VOC exceedance is much less than for a vinyl chloride exceedance and a $1,000 base gravity penalty is more in line with the reflection of actual or potential harm.

The Policy indicates that for SIP and NSPS cases only, a factor should be added to the gravity based penalty calculation for "sensitivity of the environment." The deviation at issue was not a deviation from a SIP requirement (no deviation from any of the VOC control rules under LAC 33:III.Ch. 21) or from an NSPS requirement. Further, as noted, the total amount of VOC actually emitted from the TE-2 Unit in 2017 (3.17 tpy) was less than the total amount of VOC authorized for all point sources under the permit (18.16 tpy); thus indicating that there was no harm to the environment. For these reasons, no factor for sensitivity to the environment should be included in the calculation

Because this was a one-time, isolated deviation, no increase should be added for a "duration" factor. The MC/DCE Scrubber has been in compliance with the VOC tpy limit for calendar years 2018-2019. The Policy indicates that the duration factor is included because "generally, the longer a violation continues uncorrected, the greater the risk of harm." Policy at p. 10. However, as noted above, the total VOC emitted by the unit as a whole in 2017 was less than the total VOC permitted. Where there was compliance with the underlying regulatory standard and no excess VOC emissions from the unit as a whole, there is no basis to include a duration factor in this particular instance.

The Policy indicates that the preliminary deterrence amount should consider addition of an amount for the size of the violator. Under the policy the size of the violator factor ranges from $2,000.00 to over $70,000.00. However, the Policy indicates that EPA has discretion to reduce the size of violator factor to no more than 50% of the gravity based penalty (after duration, but before adjustments) where the size of violator component is greater than 50% of the gravity based penalty. Eagle believes that equity requires EPA to do so in this case. Eagle does not need a large penalty as a deterrent. Eagle has already demonstrated compliance with the VOC limit for the scrubber for 2018-2019. In this case, the size of violator factor should be no more than $500.00 (50% of the gravity based component as determined above), for a total of $1,500.00 for the preliminary deterrence amount.

[4] The Vinyl Chloride Policy is Appendix II to the Clean Air Act Civil Penalty Policy.

2. Adjustment of the Preliminary Deterrence Amount

Under the Policy, the gravity based component may be adjusted to promote equitable treatment of the regulated community. *See* Policy at p. 8. And the Policy specifically authorizes adjusting the penalty based on the degree of cooperation of the facility in remedying the violation and for litigation risk (including "other factors as justice may require"). Eagle requests that the Preliminary Deterrence amount of $1,500.00 be adjusted downward by 30% to $1,050.00 due to Eagle's degree of cooperation and in order to reflect equitable treatment within the regulated community.

The degree of cooperation of the facility in remedying the violation is an appropriate factor to consider in adjusting the penalty. *See* Policy at p. 16. The Policy indicates that the preliminary deterrence amount may be reduced by up to 30% where there has been prompt correction of environmental problems and where the facility cooperated with EPA in the investigation and correction of the problem at issue. Eagle has not exceeded its VOC tpy limit for the MC/DCE Scrubber since 2017; thus, the issue was promptly corrected and Eagle has maintained compliance for the past two years, without the necessity of EPA taking enforcement action.

Further, Eagle was fully cooperative during the Agency's Emission Inventory Permit Consistency Review. Eagle provided the Agency with a comprehensive response to each of the Agency's citations within a month of receipt of the Agency's October 2018 letter. Eagle has sought to be forthright in its communications with the Agency and believes that the Agency has received all of the information requested.

3. Settlement Proposal

For the reasons stated above, Eagle offers to resolve Count 3 for the sum of **$1,050.00.**

B. Count 4 – Incomplete Deviation Reporting

For the reasons stated in the discussion of Count 2, above, Eagle offers to resolve Count 4 for the sum of **$5,000.00**

III. Conclusion

Both emissions exceedances addressed in the EPA NOV were very small exceedances of an annual limit, and the equipment at issue was operating in accordance with the underlying regulatory standards. Eagle promptly acted to address the deviations without the necessity of EPA or state enforcement. These were inadvertently missed in Eagle's reasonable inquiry review for assessing compliance with the thousands of requirements in Eagle's 16 title V permits. However, the total emissions were included in the annual emissions inventory reports submitted to LDEQ. After the issue

of the discrepancy between the annual emissions reports for 2016 and 2017 were called to Eagle's attention, both of these exceedances were reported to the LDEQ as deviations in the next due Semi-Annual Deviation report.

In order to resolve these matters without the necessity of litigation, Eagle is willing to enter into a Consent Agreement and Final Order which requires payment of an amount of **Thirteen Thousand One Hundred Fifty Dollars ($13,150.00)** to resolve EPA's claims in the Notice of Violation. This offer is made solely for the purpose of settling a contested matter and does not represent any admission of law or fact.

We appreciate your review of this proposal and look forward to coming to a resolution of the Notice of Violation with the EPA.

Very truly yours,

Maureen N. Harbourt

MNH/cfw

C: Don Johnson
Rebecca Moring

Message

From: Leathers, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C618FFFCE94D406F9CB82B430B073FE1-LEATHERS, JAMES]
Sent: 7/25/2019 12:54:49 AM
To: Lannen, Justin [lannen.justin@epa.gov]
Subject: Re: Eagle US 2 Enforcement history
Attachments: EPA Enforcement case.pdf; LDEQ action December 21 2018.pdf; LDEQ action June 15 2018.pdf

Justin,

To address your questions, Had Eagle inspection report been posted publicly? If so, when?

Regarding the EPA led formal 112(r) administrative action that was settled on 11/3/2015 for a penalty amount of $877,992

I could not find the inspection report. I attached the EPA case report. In the report, the inspection took place on 4/11/13. Below is the case summary.

On November 3, 2015, EPA Region 6 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, settling a CAA Section 112(r) case against Eagle US 2 LLC (Eagle) for violations at its Westlake, Louisiana facility. The CAFO alleges the following violations: (1) failure to adequately follow operating procedures; (2) failure to develop and implement operating procedures which include steps required to correct or avoid deviations; (3) failure to inspect pipe in PHH unit; (4) failure to conduct mechanical integrity inspections of certain pipes; (5) failure to conduct mechanical integrity inspections of pressure vessels; and (6) failure to update process hazard analysis every five years.. The CAFO requires Eagle to pay a $877,992 civil penalty. The CAFO also requires Eagle to implement a hydrogen chloride leak detection and repair SEP for a period of three years (cost $108,000) and to donate emergency equipment to the Moss Bluff Fire Department (cost $11,000).

I attached the two formal administrative actions led by the state that were settled on 6/15/2018 and 12/21/2018. There are similar violations in the 12/21/18 consolidated compliance order and notice of potential penalty. Let me know if you have other questions or need anything additional.

James Leathers
Environmental Engineer
EPA Region 6
Air Toxics Enforcement
Enforcement and Compliance Assurance Division
1201 Elm St., Suite 500, ECDAT
Dallas, TX 75202
(214) 665-6569
leathers.james@epa.gov

ECHO
Enforcement and
Compliance History Online

Civil Enforcement Case Report

Civil Enforcement Case

Basic Information

Case Number: 06-2015-3337
Case Name: Eagle US 2 LLC
Case Category: Administrative - Formal
Case Status (as of 11/10/2015): Closed
Case Lead: EPA
Court Docket Number: --
DOJ Docket Number: --

Relief Sought: Penalty
Enforcement Outcome: Final Order With Penalty
Headquarters Division: --
Branch: 6EN-A
Result of Voluntary Disclosure? No
Multi-media Case? --
Enforcement Type: CAA 113D1 Action For Penalty
Violations: --

Penalties – Case Level

Total Federal Penalty Assessed or Agreed To: $877,992
Total State/Local Penalty Assessed: $0
Total SEP Cost: $119,000
Total Compliance Action Cost: $20,000
Total Cost Recovery: $0

Case Summary

On November 3, 2015, EPA Region 6 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, settling a CAA Section 112(r) case against Eagle US 2 LLC (Eagle) for violations at its Westlake, Louisiana facility. The CAFO alleges the following violations: (1) failure to adequately follow operating procedures; (2) failure to develop and implement operating procedures which include steps required to correct or avoid deviations; (3) failure to inspect pipe in PHH unit; (4) failure to conduct mechanical integrity inspections of certain pipes; (5) failure to conduct mechanical integrity inspections of pressure vessels; and (6) failure to update process hazard analysis every five years.. The CAFO requires Eagle to pay a $877,992 civil penalty. The CAFO also requires Eagle to implement a hydrogen chloride leak detection and repair SEP for a period of three years (cost $108,000) and to donate emergency equipment to the Moss Bluff Fire Department (cost $11,000).

Laws and Sections

Law	Sections	Programs
CAA	112[R][7]	Prevention of Accidental Release/Risk Management Plans (RMPs)

Citations

Title	Part	Section
No data records returned		

Facilities

FRS Number	Facility Name	Address	City Name	State	Zip	SIC Codes	NAIC Codes
110000494894	EAGLE US 2 LLC - LAKE CHARLES COMPLEX	1300 PPG DR	WESTLAKE	LA	70669	2819 2869	325181

Defendants

Defendants and Settlements	In Complaint	In Settlement
Eagle US 2 LLC	Y	Y

Related Case Documents

Document	Facility Name	Publish Date	EPA Program
No data records returned			

Case Milestones

Event	Actual Date
Final Order Issued	11/03/2015
Complaint Filed/Proposed Order	11/03/2015
Enforcement Action Data Entered	11/04/2015
Enforcement Action Closed	11/10/2015
Air Resolved	11/10/2015
Compliance Achieved	11/10/2015

Pollutants

Pollutant Name	Chemical Abstract Number
No data records returned	

Related Activities

Description	Actual Date
Inspection/Evaluation	04/11/2013
Case File	--

Final Order 1

Final Order Type: Administrative Penalty Order With or Without Injunctive Relief
Final Order Name: Eagle US 2 LLC
Linked Facilities (FRS ID): 110000494894
Final Order Lodged Date: --
Final Order Entered Date: 11/03/2015
Enforcement Action Closed Date: 11/10/2015
Actual Termination Date: 11/10/2015

Penalties/SEPs/Cost Recovery Amounts

Federal Penalty Assessed or Agreed To: $877,992
State/Local Penalty Assessed: --
SEP Value: $119,000
Compliance Action Cost: $20,000
Federal Cost Recovery Awarded: $0

Final Order Status

Status Description	Fiscal Year	Quarter

Status Description	Fiscal Year	Quarter
No data records returned		

Complying Actions

Complying Action ID	Category	Description
3600014649	Prevention of Future Releases	Risk Management Plan Implemented

Supplemental Environmental Projects

SEP ID	Category	SEP Value	Description
3600002401	Emergency Planning and Preparedness	$11,000	Emergency Equipment Donation SEP. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondent shall purchase and donate the following equipment for the Moss Bluff FireDepartment: a. Two (2) Toughbook Laptop computers, b. Firehouse Cloud Software, c. Two (2) MSA Altair 5 Multi Gas Detectors, d. One (I) MSA Altair Multi Gas Detector Docking Station.
3600002400	Pollution Reduction	$108,000	The Respondent shall use the Rebellion Photonics Gas Cloud Imaging (GCI) system to monitor the PHH Unit for hydrogen chloride (HCl) leaks on a monthly basis. The monitoring will be conducted pursuant to a written leak detection system and repair (LDAR) program. The Respondent shall implement the HCl LDAR SEP in accordance with Exhibit A, within ninety (90) days of the effective date of this CAFO. 3. The Respondent shall implement the HCl LDAR SEP for a period of three years from the date the program commences.

Pollutant Reductions

Resulting From	Pollutant	Annual Amount	Units	Media Affected
CA ID 3600014649	Vinyl chloride	2,400	lbs	Air
CA ID 3600014649	Hydrochloric acid	130,000	lbs	Air
SEP ID 3600002400	Hydrochloric acid	--	--	--

Compliance Schedule

Schedule Number	Facility ID(s)	Event	Schedule Date	Actual Date	Amount
1	110000494894	Complete Required SEP	03/02/2016	03/02/2016	--
1	110000494894	Complete Required SEP	02/03/2019	--	--

JOHN BEL EDWARDS
GOVERNOR

CHUCK CARR BROWN, PH.D.
SECRETARY

State of Louisiana

DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

June 15, 2018

CERTIFIED MAIL (7014 0510 0002 3595 4356)
RETURN RECEIPT REQUESTED

EAGLE US 2 LLC
c/o C T Corporation System
Agent for Service of Process
3867 Plaza Tower Dr.
Baton Rouge, LA 70816

RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. AE-CN-14-00466
AGENCY INTEREST NO. 1255

Dear Sir/Madam:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **EAGLE US 2 LLC (RESPONDENT)** for the violation described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violation cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Pascal Ojong at (225) 219-4468.

Sincerely,

Celena J. Cage
Administrator
Enforcement Division

CJC/PON/pon
Alt ID No. 0520-00004
Attachment

c: Eagle US 2 LLC
c/o Tyler Conlee, ESH&S Professional
P.O. Box 1000
Lake Charles, LA 70602

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF	*	
	*	
EAGLE US 2 LLC	*	**ENFORCEMENT TRACKING NO.**
CALCASIEU PARISH	*	
ALT ID NO. 0520-00004	*	**AE-CN-14-00466**
	*	
	*	**AGENCY INTEREST NO.**
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT,	*	**1255**
La. R.S. 30:2001, ET SEQ.	*	

CONSOLIDATED

COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **EAGLE US 2 LLC (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent owns and/or operates LAKE CHARLES CHEMICAL MANUFACTURING COMPLEX (the facility) located at 1300 PPG Dr. (portion of) in Westlake, Calcasieu Parish, Louisiana. The facility operates or has operated under the authority of the following Title V Air Permits:

UNIT	PERMIT	ISSUE DATE	EXPIRATION DATE
VC Production Unit	897-V1	10/12/2009	7/7/2010
	897-V2	10/15/2010	10/15/2015
	897-V3	8/17/2011	10/15/2015
	897-V4	12/18/2012	10/15/2015
	897-V5	4/29/2014	10/15/2015
	897-V6	12/18/2014	10/15/2015

UNIT	PERMIT	ISSUE DATE	EXPIRATION DATE
	897-V7	4/29/2016	4/29/2021
Incinerators Unit	2040-V2	5/22/2009	2/21/2010
	2040-V3	8/13/2010	8/13/2015
	2040-V4	1/18/2011	8/13/2015
	2040-V5	10/5/2011	8/13/2014
	2040-V5AA	9/18/2012	8/13/2015
	2040-V5AA	9/26/2013	8/13/2015
	2040-V6	9/3/2015	9/3/2020
	2040-V6AA	10/20/2016	9/3/2020
	2040-V7	12/21/2016	9/3/2020
	2040-V8	11/8/2017	9/3/2020
Power/Utilities Unit	2106-V2AA	8/14/2009	3/20/2011
	2106-V3	1/27/2010	3/20/2011
	2106-V4	10/14/2011	10/14/2016
	2106-V5	6/14/2013	10/14/2016
	2106-V6	12/14/2015	10/14/2016
Derivative Docks	2206-V0AA	7/28/2009	6/29/2011
	2206-V1	3/20/2012	3/20/2017
	2206-V2	9/7/2017	9/7/2022
Waste Recovery Unit	2216-V1	3/1/2010	3/1/2015
	2216-V1AA	4/28/2010	3/1/2015
	2216-V2	3/12/2012	3/1/2015
	2216-V3	12/18/2012	3/1/2015
	2216-V4	3/6/2015	3/6/2020
Derivatives Shipping Unit	2229-V1AA	7/28/2009	6/29/2011
	2229-V2	5/9/2012	5/9/2017
	2229-V3	7/21/2017	7/21/2022
Mercury Recovery Unit	2231-V1	1/29/2008	3/3/2011
	2231-V2	2/28/2012	2/28/2017
	2231-V3	1/31/2017	1/31/2022
Derivatives Plant Common Sources	2269-V2	7/28/2009	6/29/2011
	2269-V3	2/17/2010	6/29/2011
	2269-V4	2/27/2012	2/27/2017
	2269-V5	4/25/2017	4/25/2022
Per/Tri Unit	2270-V1	10/12/2009	6/29/2011
	2270-V1AA	8/10/2010	6/29/2011
	2270-V2	8/10/2012	8/10/2017
	2270-V3	12/18/2012	8/10/2017

UNIT	PERMIT	ISSUE DATE	EXPIRATION DATE
	2270-V4	4/26/2013	8/10/2017
	2270-V5	5/19/2014	8/10/2017
Greater EDC Unit	2351-V1	8/14/2009	2/21/2010
	2350-V2	4/28/2010	4/28/2015
	2350-V3	12/18/2012	4/28/2015
	2350-V4	4/17/2014	4/28/2014
	2350-V5	7/9/2015	7/9/2020
	2350-V6	7/25/2017	7/9/2020
Complex Support Facilities	2359-V2	11/10/2009	6/29/2011
	2359-V3	3/4/2011	6/29/2011
	2359-V4	5/21/2012	5/21/2017
	2359-V5	9/20/2012	5/21/2017
	2359-V5AA	12/10/2012	5/21/2017
	2359-V5AA	2/12/2014	5/21/2017
	2359-V5AA	8/22/2014	5/21/2017
TE-2 Unit	2695-V1AA	7/28/2009	2/21/2010
	2695-V2	9/28/2010	9/28/2015
	2695-V3	8/17/2011	9/28/2015
	2695-V4	12/18/2012	9/28/2015
	2695-V5	5/22/2014	9/28/2015
	2695-V6	5/5/2016	5/5/2021
	2695-V7	10/25/2016	5/5/2021
	2695-V10	5/16/2018	5/5/2021
Chlor/Alkali Unit	2798-V1AA	5/1/2009	1/21/2014
	2798-V2	6/14/2013	1/21/2014
	2798-V3	8/22/2014	8/22/2019
	2798-V4	1/12/2015	8/22/2019
Membrane Chlor/Alkali Unit	3021-V1	10/12/2009	3/3/2011
	3021-V2	2/28/2012	2/28/2017
	3021-V3	6/14/2013	2/28/2017
	3021-V4	1/30/2017	1/30/2022
Ethylene Plant	3136-V0	12/14/2015	12/14/2020

II.

On or about December 20, 2013, the Department responded to an incident at the facility. On or about January 23, 2015, and June 1, 2018, file reviews of the facility were conducted.

While the investigation by the Department is not yet complete, the following violation was noted during the course of the file review:

In the seven (7) day and sixty (60) day written reports dated December 26, 2013; February 24, 2014; and April 25, 2014, the Respondent reported a release and fire event which occurred at the facility on December 20, 2013. The Respondent stated a pipe ruptured in the VC Production Unit causing a release of EDC, VCM, and HCl, which ignited and burned from approximately 1:41 p.m. to 2:38 p.m. As a result of the incident, U.S. Interstate 10 was shut down and a shelter-in-place order was issued for zones in areas downwind of the facility until 2:55 p.m. The Respondent reported that during restart of the No. 2 Vinyl Furnace following a trip condition, some burners would not stay lit due to the center gas flow control valve being closed preventing the center chamber burners from receiving gas. Reportedly, the center gas flow valve was acting as designed. The outside operators and instrument technicians asked the console operator several times to increase the gas pressure. Once some burners in the outer chambers were lit and the total gas flow increased, the middle gas flow control valve began opening to maintain the target percentage of total gas flow. By this time, in an attempt to provide enough gas pressure to light the burners, the console operator manually opened the main gas valve such that the gas pressure was approximately 38 psig, well above the 21 psig that was controlled prior to the furnace trip. The operator noticed a high outlet temperature on the Number 2 Pass, and closed back on the gas to the Number 2 Pass and opened up on the gas to the Number 1 Pass. The Respondent stated at this point the furnace was being over-fired, with the No. 2 pass at a higher firing rate than the No. 1 pass. This degree of over-firing caused very rapid increases in furnace temperatures. The Respondent reported adjustments were made to redistribute the gas, raise EDC feed, and reduce total gas flow in order to remedy the imbalance between the two (2) passes, but the adjustments were minor compared to what was needed. The high temperatures weakened the pipe until it could not withstand the internal pressure and ruptured.

According to the Respondent, a review of the temperature data revealed the temperature rise in the No. 2 Furnace was not being controlled. Personnel focus was on maintaining gas pressure instead of controlling No. 2 Furnace temperatures. Based on the capacities of the components involved and knowledge of the process, the Respondent reported amounts of pollutants which flowed into the fire as approximately 102,000 lbs EDC; 48,000 lbs VCM; and 26,000 lbs HCl. The Respondent estimated the combustion efficiency of the fire to be 95% and reported the emissions were 5,100 lbs EDC; 2,400 lbs VCM; and 123,000 lbs HCl. Following the incident and investigation, the Respondent reported the startup procedures were updated to address restart of a furnace after a trip condition, additional automatic shutdown scenarios were programmed in the Programmable Logic Controller, the furnace Safe Operating Envelope documentation was updated, and the unit personnel were trained on procedure changes prior to unit restart. This release is a violation of LAC 33:III.905 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

III.

On or about, November 3, 2015, the Respondent entered into a Consent Agreement & Final Order (CAFO), Docket No. CAA-06-2015-3337, with the United States Environmental Protection Agency (EPA). According to the CAFO, on or about April 8, 2013, the EPA inspected Respondent's facility and discovered five (5) violations of 40 CFR 68 Chemical Accident Prevention Provisions (CAPP) associated with the December 20, 2013, incident.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is **hereby ordered**:

I.

To take, immediately upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Air Quality Regulations and all applicable permits.

II.

To submit to the Department, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, any and all updated emission calculations for the December 20, 2013, incident and an explanation of the discrepancy between the amounts outlined in the 60-day written report submitted to the Department April 25, 2014 and Consent Agreement & Final Order Docket No. CAA-06-2015-3337.

III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violation and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attn: Pascal Ojong
Re: Enforcement Tracking No. AE-CN-14-00466
Agency Interest No. 1255

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. AE-CN-14-00466
Agency Interest No. 1255

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S.

49:950, et seq.), and the Division of Administrative Law (DAL) Procedural Rules. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars ($27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, civil penalties of not more than thirty-two thousand five hundred dollars ($32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars ($50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

NOTICE OF POTENTIAL PENALTY

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed

regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Pascal Ojong at (225) 219-4468 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

III.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.

IV.

The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY** portion, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein. The Respondent may offer a settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department. The settlement offer amount may be entered on the attached **"CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE"** form. The Respondent must include a justification of the offer. **DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.

V.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 15th day of June, 2018.

Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: Pascal Ojong

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE
ENFORCEMENT DIVISION — CONSOLIDATED COMPLIANCE ORDER &
POST OFFICE BOX 4312 — NOTICE OF POTENTIAL PENALTY
BATON ROUGE, LOUISIANA 70821-4312 — REQUEST TO CLOSE

Enforcement Tracking No.	AE-CN-14-00466	Contact Name	Pascal Ojong
Agency Interest (AI) No.	1255	Contact Phone No.	(225) 219-4468
Alternate ID No.	0520-00004		
Respondent:	**EAGLE US 2 LLC**	Facility Name:	Lake Charles Complex
	c/o C T Corporation System Agent for Service of Process	Physical Location:	U.S. Interstate 10 and east of U.S. Interstate 220 in Lake Charles
	3867 Plaza Tower Dr.	City, State, Zip:	Lake Charles
	Baton Rouge, LA 70816	Parish:	Calcasieu , Louisiana 70669

STATEMENT OF COMPLIANCE

STATEMENT OF COMPLIANCE	Date Completed	Copy Attached?
A written report was submitted in accordance with Paragraph III of the "Order" portion of the COMPLIANCE ORDER.		
All necessary documents were submitted to the Department within 30 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph II of the "Order" portion of the COMPLIANCE ORDER.		
All necessary documents were submitted to the Department within 45 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) ? of the "Order" portion of the COMPLIANCE ORDER.	N/A	N/A
All necessary documents were submitted to the Department within 90 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) ? of the "Order" portion of the COMPLIANCE ORDER.	N/A	N/A
All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. Final compliance was achieved as of:		[redacted]

SETTLEMENT OFFER *(OPTIONAL)*

(check the applicable option)

_____	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:I.Subpart1.Chapter7.
_____	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (AE-CN-14-00466), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.
_____	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (AE-CN-14-00466), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay $_____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance. • Monetary component = $_____ • Beneficial Environmental Project (BEP)component (optional)= $_____ • *DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM- the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.*
	The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (AE-CN-14-00466) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

CERTIFICATION STATEMENT		
I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.		
Respondent's Signature	Respondent's Printed Name	Respondent's Title
Respondent's Physical Address	Respondent's Phone #	Date
MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:		
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division P.O. Box 4312 Baton Rouge, LA 70821 Attn: Pascal Ojong		

Message

From: Duplechain, Dominique [Duplechain.Dominique@epa.gov]
Sent: 9/16/2015 1:20:46 PM
To: Phelps, Sherronda [Phelps.Sherronda@epa.gov]
Subject: FW: Revised Draft CAFO Eagle US 2 9-14-15.docx
Attachments: Revised Draft CAFO Eagle US 2 9-14-15.docx; Maureen Harbourt.vcf

Everyone always get us mixed up.

From: Pearson, Evan
Sent: Wednesday, September 16, 2015 7:53 AM
To: Duplechain, Dominique; Tates, Samuel
Subject: FW: Revised Draft CAFO Eagle US 2 9-14-15.docx

From: Maureen Harbourt [mailto:maureen.harbourt@keanmiller.com]
Sent: Tuesday, September 15, 2015 7:28 PM
To: Pearson, Evan
Subject: Revised Draft CAFO Eagle US 2 9-14-15.docx

Evan,

I am attaching comments and requested edits on the draft CAFO that you sent last week. Please let me know if you have any questions.

Thank you,
Maureen

Maureen Harbourt
Partner
Kean Miller LLP

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225.382.3412 (direct)
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KEAN | MILLER LLP
ATTORNEYS AT LAW

CONFIDENTIALITY STATEMENT

ENVIRONMENTAL PROTECTION AGENCY
REGION 6 UNITED STATES

DALLAS, TEXAS

IN THE MATTER OF:	)	
EAGLE US 2, LLC WESTLAKE, LOUISIANA	)	DOCKET NO. CAA-06-2015-3337
RESPONDENT	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Eagle US 2, LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits that this tribunal has ~~the~~ jurisdictional to enforce this Consent Agreement and Final Order ~~allegations contained herein~~; however, the Respondent neither admits nor denies the specific factual allegations or conclusions of law contained in this CAFO.

Commented [MH1]: We were not sure which allegations are considered to be jurisdictional, and thought this was a more straightforward way to admit jurisdiction

3. As set forth in 40 C.F.R. § 22.18(b)(2) and solely insofar as this proceeding and any future action brought by the Complainant are concerned, t~~T~~he Respondent explicitly waives any

right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO. This waiver is limited to Respondent's rights with respect to the Complainant and does not waive any right of Respondent to contest allegations or raise defenses with respect to the claims or subject matter of this CAFO vis-à-vis any other Person.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for civil penalties for those alleged violations and facts which are set forth herein.

5. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the settlement ~~civil penalty in the~~ amount ~~and~~ by the method set forth in this CAFO, and the conditions specified in the CAFO.

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. Eagle US 2, LLC (Respondent) is a Delaware limited liability company authorized to do business in the State of Louisiana.

9. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

10. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

11. The Respondent owns and operates a chemical manufacturing facility located at 1300 PPG Drive, Westlake, Louisiana 70669.

12. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

> any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

13. The Respondent's facility identified in Paragraph 11 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

14. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

15. Ammonia (anhydrous), chlorine, ethyl chloride, and vinyl chloride are each a "regulated substance", as set forth in 40 C.F.R. § 68.130.

16. "Process" is defined in 40 C.F.R. § 68.3 as meaning

> any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

17. The Respondent has the following processes at the stationary source identified in Paragraph 11:

A. South Liquefaction (Chlor-Alkali) (excluding Brine Treatment);
B. North Liquefaction (Chlor-Alkali) (excluding Brine Treatment);
C. Chlorine Tank Car Loading;
D. Perchloroethylene/Trichloroethylene Unit - the Ammonia process only;
E. Tri-Ethane II Unit - Methyl Chloroform process chlorination and Vinyl Chloride process;
F. Ethyl Chloride Unit - EC/HCL process;
G. Greater EDC Unit - EDC chlorination EDC/TRANS;
H. North Dock (excluding solvent storage);
I. PHH Unit – Vinyl Chloride process, EDC chlorination process;
J. Vinyl Chloride Storage South Terminal;
K. Sulfur Chloride Unit;
L. Vinyl Chloride and Ethyl Chloride loading at Derivatives Shipping Area;
M. Membrane Cell Chlorine (excluding Brine Treatment);

N. Plant "C" Chlorine (excluding Brine Treatment); and
O. Plant "A" Chlorine (excluding Brine Treatment)

18. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

A. ammonia (anhydrous) – 10,000 pounds;
B. chlorine – 2,500 pounds;
C. ethyl chloride – 10,000 pounds; and
D. vinyl chloride – 10,000 pounds.

19. The Respondent has exceeded the threshold quantity for one or more of the following regulated substances at the processes identified in Paragraph 17:

A. ammonia (anhydrous);
B. chlorine;
C. ethyl chloride; and
D. vinyl chloride.

20. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

21. Each process identified in Paragraphs 17 and 19 is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

22. The covered processes identified in Paragraphs 17, 19, and 21 are subject to the "Program 3" requirements of the Risk Management Program (RMP) regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

23. On or about April 8 – 12, 2013, an EPA inspector conducted an inspection of the Respondent's facility.

24. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to bring an administrative action for penalties that exceed $320,000[1] and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

25. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the penalty might exceed the statutory amount and the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

B. ALLEGED VIOLATIONS

Count One – Failure to Follow Operating Procedures

[1] The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to $220,000 for violations occurring between January 30, 1997 and March 15, 2004, to $270,000 for violations occurring between March 15, 2004 and January 12, 2009, to $295,000 for violations occurring between January 12, 2009 and December 6, 2013, and to $320,000 for violations occurring after December 6, 2013.

26. 40 C.F.R. § 68.69(a)(1) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address, among other things, startup following a turnaround, or after an emergency shutdown.

27. The PHH #2 Furnace is part of the PHH Unit.

28. The PHH Unit is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

29. On or about December 20, 2013, the Respondent attempted to restart the PHH #2 Furnace following a trip condition.

30. On or about December 20, 2013, the Respondent failed to adequately follow the operating procedures for the restart of the PHH #2 Furnace.

31. On or about December 20, 2013, a fire occurred at the PHH # 2 Furnace during an attempted restart of the PHH #2 Furnace.

32. ~~According to the Respondent's RMP Plan, t~~The fire resulted in the release of approximately 2400 pounds of vinyl chloride and approximately 130,000 pounds of hydrogen chloride (anhydrous) [hydrochloric acid].

33. ~~According to the Respondent's RMP Plan, t~~The fire resulted in approximately $8,000,000 of on-site property damage.

34. According to information from third-parties ~~the Respondent's RMP Plan~~, the fire resulted in the following off-site impacts:

a. 1 person hospitalized;
b. 27 persons received medical treatment;
c. 130 persons were evacuated; and
d. ~~A~~approximately 5,000 persons were sheltered-in-place.

[DOCPROPERTY DocNo]

35. Therefore, the Respondent violated 40 C.F.R. § 68.69(a)(1) by failing to adequately ~~the following~~ the operating procedures for the restart of the PHH #2 Furnace.

Count Two – Failure to Develop and Implement Operating Procedures Which Included Steps Required to Correct or Avoid Deviations

36. 40 C.F.R. § 68.69(a)(2)(ii) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address, among other things, steps required to correct or avoid deviations.

37. The PHH #2 Furnace is part of the PHH Unit.

38. The PHH Unit is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

39. On or about December 20, 2013, the Respondent attempted to restart the PHH #2 Furnace following a trip condition.

40. An over-firing condition occurred during the attempted restart of the PHH #2 Furnace following a trip condition.

41. On or about December 20, 2013, a fire occurred at the PHH # 2 Furnace during an attempted restart of the PHH #2 Furnace.

42. ~~According to the Respondent's RMP Plan, t~~The fire resulted in the release of approximately 2400 pounds of vinyl chloride and approximately 130,000 pounds of hydrogen chloride (anhydrous) [hydrochloric acid].

43. ~~According to the Respondent's RMP Plan, t~~The fire resulted in approximately $8,000,000 of on-site property damage.

44. According to information from third-parties~~the Respondent's RMP Plan~~, the fire resulted in the following off-site impacts:

a. 1 person hospitalized;

b. 27 persons received medical treatment;
c. 130 persons were evacuated; and
d. ~~A~~approximately 5,000 persons were sheltered-in-place.

45. The ~~Respondent determined that the~~ safe operating envelope documents for the PHH #2 Furnace did not contain criteria/preventive action for furnace over-firing scenarios.

46. Therefore, the Respondent violated 40 C.F.R. § 68.69(a)(2)(ii) by failing to develop and implement operating procedures for PHH #2 Furnace which included steps required to correct or avoid the deviations that occurred on December 20, 2013.

Count Three – Failure to Inspect Pipe in PHH Unit

47. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(d) applies to the following process equipment:

A. Pressure vessels and storage tanks;
B. Piping systems (including piping components and valves);
C. Relief and vent systems and devices;
D. Emergency shutdown systems;
E. Controls (including monitoring devices and sensors, alarms, and interlocks); and
F. Pumps.

48. 40 C.F.R. § 68.73(d) provides the following:

(1) Inspections and tests shall be performed on process equipment.
(2) Inspection and testing procedures shall follow recognized and generally acceptable good engineering practices.
(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

49. The 2" Quench Dopp Overhead (QDOH) return line near the Quench Tower is part of the PHH Unit.

50. The PHH Unit is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

51. On or about November 4, 2012, a leak was observed in a weld on the 2" QDOH return line near the Quench Tower.

52. On or about November 4, 2012, a temporary clamp was placed over the leak on the 2" QDOH return line near the Quench Tower.

53. On or about November 12, 2012, an engineered clamp was placed over the leak on the 2" QDOH return line near the Quench Tower.

54. On or about November 28, 2012, the Respondent repumped the engineered clamp on the 2" QDOH return line near the Quench Tower.

55. On or about December 24, 2012, a fire occurred in the PHH production area.

56. ~~According to the Respondent's RMP Plan, t~~The fire resulted in the release of approximately 15,000 pounds of vinyl chloride.

57. ~~According to the Respondent's RMP Plan, t~~The fire resulted in the following on-site impacts:

a. 1 person injured; and
b. approximately $3,900,000 of on-site property damage.

58. The Respondent's investigation of the fire focused on the breached 2" QDOH return line near the Quench Tower.

59. Ultrasonic Thickness (UT) readings taken on the piping after the December 24, 2012 fire indicated a general thinning of the line with some localized areas of accelerated thinning.

60. The 2" QDOH return line near the Quench Tower was not adequately~~never~~ inspected.

61. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to adequately inspect the 2" QDOH return line near the Quench Tower.

Count Four – Failure to Conduct Mechanical Integrity Inspections of Certain Pipes

62. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(d) applies to the following process equipment:

A. Pressure vessels and storage tanks;
B. Piping systems (including piping components and valves);
C. Relief and vent systems and devices;
D. Emergency shutdown systems;
E. Controls (including monitoring devices and sensors, alarms, and interlocks); and
F. Pumps.

63. 40 C.F.R. § 68.73(d) provides the following:

(1) Inspections and tests shall be performed on process equipment.
(2) Inspection and testing procedures shall follow recognized and generally acceptable good engineering practices.
(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

64. As of May 9, 2013, the Respondent failed to inspect 2255 pipes at one or more of the covered processes identified in Paragraphs 17, 19, and 21.

65. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to conduct inspections of certain pipes at certain covered processes.

Count Five – Failure to Conduct Certain Mechanical Integrity Inspections of Pressure Vessels

66. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(d) applies to the following process equipment:

A. Pressure vessels and storage tanks;
B. Piping systems (including piping components and valves);
C. Relief and vent systems and devices;
D. Emergency shutdown systems;
E. Controls (including monitoring devices and sensors, alarms, and interlocks); and
F. Pumps.

67. 40 C.F.R. § 68.73(d) provides the following:

(1) Inspections and tests shall be performed on process equipment.
(2) Inspection and testing procedures shall follow recognized and generally acceptable

good engineering practices.
(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

68. As of May 9, 2013, the Respondent failed to conduct remaining life calculations for 319 pressure vessels at one or more of the covered processes identified in Paragraphs 17, 19, and 21.

69. The remaining life calculations identified in Paragraph 68 is required by API 510.

70. The remaining life calculations in API 510 is a recognized and generally acceptable good engineering practice.

71. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to conduct certain types of tests and inspections of certain pressure vessels at certain covered processes.

Count Six – Failure to Update Process Hazard Analysis Every Five Years

72. 40 C.F.R. § 68.67(f) provide that at least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in 40 C.F.R. § 68.67(d), to assure that the process hazard analysis is consistent with the current process.

73. The S. Liq. Cl_2 Compression Process is part of the South Liquefaction (Chlor-Alkali) (excluding Brine Treatment) process.

74. The South Liquefaction (Chlor-Alkali) (excluding Brine Treatment) process is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

75. The Respondent updated the process hazard analysis for the S. Liq. Cl_2 Compression Process on September 13, 2007.

76. The Respondent was required to update the process hazard analysis for the S. Liq. Cl_2 Compression Process by September 13, 2012.

77. The Respondent failed to update the process hazard analysis for the S. Liq. Cl_2 Compression Process until March 13, 2013.

78. Therefore, the Respondent violated 40 C.F.R. § 68.67(f) by failing to update the process hazard analysis for the S. Liq. Cl_2 Compression Process until March 13, 2013.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

79. ~~For the reasons set forth above, t~~The Respondent has agreed to pay a settlement amount ~~civil penalty~~ of **Eight Hundred Seventy-Seven Thousand, Nine Hundred Ninety-Two Dollars ($877,992)**.

80. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the ~~assessed civil penalty~~ agreed settlement amount by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381".

PLEASE NOTE: Docket Number CAA-06-2015-3337 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Sherronda Phelps
Environmental Engineer
Surveillance Section – Houston Lab (6EN-ASH)
U.S. EPA, Region 6 Laboratory
10625 Fallstone Rd
Houston, TX 77099

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when payment is ~~penalties are~~ received in the Region.

81. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the settlement amount ~~civil penalty~~ paid to the United States Treasurer.

82. If the Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, the Respondent may be subject to a civil action to collect any unpaid portion of the settlement amount~~assessed penalty~~, together with interest, handling charges, and nonpayment penalties as set forth below.

83. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the settlement amount~~civil penalty assessed~~ in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the settlement amount ~~civil penalty~~ that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

84. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties or settlement amount for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty or settlement amount remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall

accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

85. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

86. This CAFO will beis considered ~~a "prior violation"~~ for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy, and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

B. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

87. The Respondent shall conduct the following supplemental environmental projects (SEPs):

A. Hydrogen Chloride Leak Detection and Repair (HCl LDAR) SEP.

1. The Respondent shall use the Rebellion Photonics Gas Cloud Imaging (GCI) system to monitor the PHH Unit for hydrogen chloride (HCl) leaks on a monthly basis. The monitoring will be conducted pursuant to a written leak detection system and repair (LDAR) program, which is attached as Exhibit A and incorporated by reference into this CAFO.

2. The Respondent shall implement the HCl LDAR SEP in accordance with Exhibit A, within ninety ~~thirty~~ (~~30~~90) days of the effective date of this CAFO.

Commented [MH2]: EPA, we believe the contractor will require this amount of advance notice to schedule and set up this program

3. The Respondent shall implement the HCl LDAR SEP for a period of three years from the date the program commences.

4. The Respondent shall submit Semi-Annual Monitoring Reports to EPA. The Reports will contain the following information:

a. Equipment monitored;
b. Date(s) of monitoring;
c. Location, date, and time HCl leak(s) detected;
d. Location, date, and time HCl leak(s) confirmed repaired;
e. Location, date, and time HCl leak(s) placed on Delay of Repair, if any, reason HCl leak could not be repaired, and date of the next process unit shutdown;
f. Dates of any process unit shutdowns; and
g. Any deviations from the program.

5. The Respondent shall submit the Semi-Annual Monitoring Reports to EPA on February 1 of each year (covering the previous sixth month period from June 1 – December 31), and on August 1 of each year (covering the previous six month period from January 1 – June 30).

6. The Respondent shall submit the following certification in the Semi-Annual Monitoring Reports, signed by a responsible corporate official:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

7. The Respondent agrees that the failure to timely submit the Semi-Annual Monitoring Reports to EPA shall be deemed a violation of this CAFO and the Respondent shall be liable for stipulated penalties pursuant to Paragraph 99.F.

B. Emergency Equipment Donation SEP.

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondent shall purchase and donate the following equipment for the Moss Bluff Fire Department:

a. Two (2) Toughbook Laptop computers, which will allow the fire department to enable enroute fire engines to have access to preplan information location maps with water supply details.

b. Firehouse Cloud Software, which will able mobile users to access the software currently used by the fire department for all record keeping.

c. Two (2) MSA Altair 5 Multi Gas Detectors. These detectors test levels of combustible gases in lower explosive limit (LEL) and/or volume percentage range, oxygen, carbon monoxide, carbon dioxide, hydrogen sulfide, sulfur dioxide, ammonia, chlorine, and other gases, depending on sensor configuration. The detectors are equipped with MotionAlert™, which lets others know if the user has become immobile, and InstantAlert ™, a manual alarm that alerts others if a dangerous situation has arisen.

d. One (1) MSA Altair Multi Gas Detector Docking Station.

88. The Respondent is responsible for the satisfactory completion of the SEPs. The total expenditure for the SEP described in Paragraph 87.A shall be no less than $108,000, and the total expenditure for SEP described in Paragraph 87.B shall be no less than $11,000. The Respondent hereby certifies that the cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and that the Respondent in good faith estimates that the cost to implement the HCl LDAR SEP is $108,000, and the cost to implement the Emergency Equipment Donation SEP is $11,000. Eligible SEP costs do not include inventory on hand,

overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. The Respondent shall include documentation of the expenditures made in connection with each SEP as part of the respective SEP Completion Report.

89. The Respondent hereby certifies that as of the date of this CAFO, the Respondent is not required to perform or develop the SEPs by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEPs by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEPs were not projects that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for these SEPs, and that the Respondent will not receive reimbursement for any portion of the SEPs from another person or entity.

90. The Respondent also certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in Paragraph 87, and that it has inquired of [SEP recipient and/or SEP implementer] whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the [recipient and/or the implementer] that neither is a party to such a transaction.

91. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEPs under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action against Eagle U.S. 2, LLC, taken on behalf of the EPA to enforce federal laws."

92. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

SEP Completion Report

93. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of each SEP. The SEP Completion Report shall contain the following information:

A. A detailed description of the SEP as implemented;

B. A description of any operating or logistical problems encountered and the solutions thereto;

C. Itemized final costs with copies of receipts for all expenditures;

D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and

E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

94. The Respondent agrees that failure to timely submit the final SEP Completion Reports to EPA shall be deemed a violation of this CAFO and the Respondent shall become liable for stipulated penalties pursuant to Paragraph 99.F.

95. In itemizing its costs in the SEP Completion Reports, the Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Reports include costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts

do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

96. The Respondent shall submit the following certification in the SEP Completion Reports, signed by a responsible corporate official:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

97. After receipt of the SEP Completion Reports described in Paragraph 93 above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 99 below.

98. If EPA elects to exercise option (a) in Paragraph 97 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself. EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 97 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply

with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 99 herein.

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount

99. In the event that the Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEPs described in Paragraph 87 of this CAFO and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in Paragraph 88 above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, the Respondent shall pay a stipulated penalty to the United States in the amount of $79,558 (100% of the amount the penalty was mitigated) for the HCl LDAR SEP, and $8,800 (100% of the amount the penalty was mitigated) for the Emergency Equipment Donation SEP.

B. If the SEPs are not completed in accordance with Paragraphs 87 - 88, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEPs are completed in accordance with Paragraphs 87 - 88, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty to the United States in the amount of $39,779 [50% of the amount the penalty was mitigated ($79,558)] for the HCl LDAR SEP, and pay a stipulated

penalty to the United States in the amount of $4,400 [50% of the amount the penalty was mitigated ($8,800)] for the Emergency Equipment Donation SEP.

D. If the SEP is completed in accordance with Paragraphs 87 - 88 and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, the Respondent shall not be liable for any stipulated penalty.

E. If the Respondent fails to timely complete a SEP for any reason, the Respondent shall pay stipulated penalties as follows:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 100,~~000~~
16th through 30th day	$ 150~~1~~,~~500~~
31st day and beyond	$ 250,~~500~~

Commented [MH3]: EPA, we respectfully request that these stipulated penalties be revised as shown. As stated, we believe they are disproportionately high and are more akin to stipulated penalties for failure to perform needed injunctive relief where a violation is at issue as distinguished from a voluntary SEP

F. For failure to timely submit a Semi-Annual Monitoring Report required by Paragraph 87.A or SEP Completion Report required by Paragraph 93 above, the Respondent shall pay a stipulated penalty in the amount of $100~~500~~ for each day after the report was originally due, until the report is submitted.

100. The determinations of whether a SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

101. Stipulated penalties for Paragraphs 99.E and 99.F above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

102. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 80 herein. Interest and late charges shall be paid as stated in Paragraphs 83 - 84 herein. If EPA does not submit a written demand for such penalties within one (1) year from accrual, such penalties shall be deemed waived.

103. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

C. NOTIFICATION

104. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Complainant:

Sherronda Phelps
Environmental Engineer
Surveillance Section – Houston Lab (6EN-ASH)
U.S. EPA, Region 6 Laboratory
10625 Fallstone Rd
Houston, TX 77099

Respondent:
Esther Liggio
Environmental Manager
Eagle US 2 LLC
1300 PPG Drive
Westlake, LA 70669

D. COMPLIANCE

105. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

E. MODIFICATION

106. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

F. RETENTION OF ENFORCEMENT RIGHTS

107. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

108. Nothing in this CAFO shall relieve the Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

109. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

110. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed

to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the Clean Air Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

111. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

112. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

113. The Respondent also waives any ~~and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of law or fact set forth in this CAFO, including any~~ right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

114. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining

complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the Clean Air Act or with any other provisions of federal, State, or local laws, regulations, or permits.

G. COSTS

115. Except as provided in Paragraph 85, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

H. TERMINATION

116. At such time as the Respondent believes it is in compliance with all of the requirements of this CAFO, it may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents ~~has~~have ~~been~~ notified by the EPA in writing that this CAFO has been satisfied and terminated.

I. EFFECTIVE DATE

117. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

Eagle US 2, LLC

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and Enforcement
Division
EPA – Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2015, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested _____:

Maureen Harbourt
Kean Miller, LLP
~~909 Poydras~~ 400 Convention Street
Suite 7003600
Baton Rouge~~New Orleans~~, LA 70802~~112~~

_____

[DOCPROPERTY DocNo]

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/21/2015 4:20:56 PM
To: maureen.harbourt@keanmiller.com
CC: Phelps, Sherronda [Phelps.Sherronda@epa.gov]
Subject: Eagle US 2 LLC Letter
Attachments: Eagle US 2 LLC Letter - 4-21-15.pdf; Eagle US 2 LLC Draft Penalty Calculations - 4-21-15.pdf; 112r CEP Final 20 June 2012.pdf

Please see attached documents. Any questions, please give me a call.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 5/11/2015 3:17:13 PM
To: Maureen Harbourt [maureen.harbourt@keanmiller.com]
CC: Phelps, Sherronda [Phelps.Sherronda@epa.gov]; Tates, Samuel [Tates.Samuel@epa.gov]
Subject: Draft Eagle US 2 LLC CAFO
Attachments: Draft Eagle US 2 LLC CAFO - 5-11-15.docx

Flag: Follow up

As promised, attached is a copy of the draft Eagle US 2 LLC CAFO.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 9/8/2015 3:55:08 PM
To: Maureen Harbourt [maureen.harbourt@keanmiller.com]
CC: Phelps, Sherronda [Phelps.Sherronda@epa.gov]; Tates, Samuel [Tates.Samuel@epa.gov]
Subject: Revised Draft Eagle US 2 CAFO
Attachments: Draft Eagle US 2 LLC CAFO - 9-8-15 (clean).docx; Draft Eagle US 2 LLC CAFO - 9-8-15 (markup).pdf

Flag: Follow up

Attached are a clean version and a marked up version of the revised draft Eagle US 2 CAFO. You will notice I have changed Count 1 from Failure to Develop Adequate Startup Procedures for Restart of Warm Furnace to Failure to Follow Operating Procedures, and have dropped Count 4 – Failure to Conduct an Adequate Management of Change, as we promised in a previous letter.

It is my understanding the Eagle is currently revising the leak detection and repair (LDAR) program to provide a leak definition. Please note that EPA needs to approved the revised leak detection and monitoring program prior to finalizing the CAFO. Therefore, we need to review this document ASAP. Also, Eagle needs to supply a contact for Paragraph 104.

If you have any questions, please give me a call.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 9/21/2015 6:08:03 PM
To: Phelps, Sherronda [Phelps.Sherronda@epa.gov]; Tates, Samuel [Tates.Samuel@epa.gov]
Subject: Revisions to Eagle US 2 CAFO
Attachments: EPA Revisions to Revised Draft CAFO Eagle US 2 9-14-15.docx

Attached are my proposed revisions to the draft Eagle US 2 CAFO. The changes indicated on the document are changes from Eagle's last proposed draft (in other words, I accepted all of their changes and then made my changes. Please let me know if you have any comments. Thanks.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 9/23/2015 2:42:37 PM
To: Maureen Harbourt [maureen.harbourt@keanmiller.com]
CC: Tates, Samuel [Tates.Samuel@epa.gov]; Phelps, Sherronda [Phelps.Sherronda@epa.gov]
Subject: Revisions to Eagle US 2 CAFO
Attachments: EPA Revisions to Draft Eagle US 2 CAFO - 9-23-15 (clean).docx; EPA Revisions to Draft Eagle US 2 CAFO - 9-23-15 (markup).pdf

Attached is a revised draft of the Eagle US 2 CAFO. I have attached a clean version and a redline/strikeout version. I accepted all of your changes, and then made my changes. Therefore, what is shown in the track changes version are changes to your draft. Most of the changes are self-explanatory. I have the following explanation on some of your proposed changes:

1. Paragraphs 2, 3, 4, and 5 – This is required language from 40 C.F.R. 22.18(b)(2) and (c).
2. Paragraph 46 – The document failed to include criteria/preventive action for furnace over-firing scenarios. It needed this from Day 1. Therefore, the violation is not limited to December 20, 2013.
3. Section III.A. – Civil Penalty. The payment is a civil penalty, not a settlement amount. That is what is provided for by the statute.
4. Paragraph 87.A.8 – Although I stated in our telephone call last week that Eagle would have the opportunity to claim the video documentation as CBI, we cannot do this. Emissions data cannot be accorded CBI treatment. 40 C.F.R. 2.301(e).
5. Paragraphs 99.E and F – These are standard stipulated penalty amounts that we use for all SEPs.

In addition, could you please send me your revised Monitoring Plan for review? Once we approve it, we can attach it to the CAFO as Exhibit A, as referenced in Paragraph 87.A.1.

Any questions, please feel free to give me a call.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 10/6/2015 3:30:19 PM
To: Maureen Harbourt [maureen.harbourt@keanmiller.com]
CC: Phelps, Sherronda [Phelps.Sherronda@epa.gov]; Tates, Samuel [Tates.Samuel@epa.gov]
Subject: Eagle US 2 CAFO
Attachments: Draft Eagle US 2 CAFO - 10-6-15.docx

Attached is a revised draft Eagle US 2 CAFO. We have no comments on the HCl Monitoring Plan. I have included it within the text of the CAFO. It is set forth on pages 30 – 31 of the CAFO. Regarding your request for two additional changes, I have added the word "only" to paragraph 3 of the CAFO. We believe the language is clear that Eagle's waiver only applies to this case. This is the required language from 40 C.F.R. 22.18(b)(2). Second, I have added the words "of HCl leaks" as requested to Paragraph 87.A.8 as you requested. This should address all of your concerns. Please let me know if these final changes are acceptable so we can finally settle the case.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 10/13/2015 3:46:41 PM
To: Maureen Harbourt [maureen.harbourt@keanmiller.com]
CC: Tates, Samuel [Tates.Samuel@epa.gov]; Phelps, Sherronda [Phelps.Sherronda@epa.gov]
Subject: RE: Eagle US 2 CAFO
Attachments: Final Eagle US 2 CAFO - 10-13-15.docx

I have incorporated the change you suggested below. Negotiations on the CAFO are completed, and the CAFO is now ready for Eagle US 2's signature.

From: Maureen Harbourt [mailto:maureen.harbourt@keanmiller.com]
Sent: Friday, October 09, 2015 5:43 PM
To: Pearson, Evan
Cc: Phelps, Sherronda; Tates, Samuel
Subject: RE: Eagle US 2 CAFO

CONFIDENTIAL SETTLEMENT COMMUNICATION

Evan,

Per our telephone conversation today, we request a revision to paragraph 105, such that it reads as shown below. We do not object to the other changes you describe below in your email.

105. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein. Respondent has retained an independent third-party to conduct the triennial compliance audit required by 40 C.F.R. 40 C.F.R § 68.79 which commenced on October 6, 2015 and is anticipated to be complete by November 30, 2015. Respondent will provide the final audit report to EPA on or before January 31, 2016.

Thank you,

Maureen

Maureen Harbourt
Partner
Kean Miller LLP

II City Plaza
400 Convention Street, Suite 700
Baton Rouge, Louisiana 70802

Post Office Box 3513 (70821-3513)
225.382.3412 (direct)
225.388.9133 (facsimile)
225.937.5274 (mobile)
maureen.harbourt@keanmiller.com

KEAN | MILLER LLP
ATTORNEYS AT LAW

WEBSITE | BLOG | BIO

CONFIDENTIALITY STATEMENT

This electronic message contains information from the law firm of Kean Miller LLP and is confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately by telephone at (225) 387-0999.

From: Pearson, Evan [mailto:Pearson.Evan@epa.gov]
Sent: Tuesday, October 06, 2015 10:30 AM
To: Maureen Harbourt
Cc: Phelps, Sherronda; Tates, Samuel
Subject: Eagle US 2 CAFO

Attached is a revised draft Eagle US 2 CAFO. We have no comments on the HCl Monitoring Plan. I have included it within the text of the CAFO. It is set forth on pages 30 – 31 of the CAFO. Regarding your request for two additional changes, I have added the word "only" to paragraph 3 of the CAFO. We believe the language is clear that Eagle's waiver only applies to this case. This is the required language from 40 C.F.R. 22.18(b)(2). Second, I have added the words "of HCl leaks" as requested to Paragraph 87.A.8 as you requested. This should address all of your concerns. Please let me know if these final changes are acceptable so we can finally settle the case.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 1/15/2015 9:19:46 PM
To: Phelps, Sherronda [Phelps.Sherronda@epa.gov]
Subject: Draft Eagle US 2 CAFO
Attachments: Draft Eagle US 2 LLC CAFO.docx

Your comments please.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 1/20/2015 9:41:18 PM
To: Phelps, Sherronda [Phelps.Sherronda@epa.gov]
Subject: Draft Penalty Calculations for Eagle US 2, LLC
Attachments: Eagle US 2 LLC Draft Penalty Calculations with Comment Balloons.docx

Here are my initial draft penalty calculations for Eagle US 2, LLC for your review. I left a voice mail message for the Eagle attorney to call me. When she returns my call, I will request that they provide us with the net worth for Eagle. I am also consulting with legal & program as to how to use the Extent of Damages multiplier in our case.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov